

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 8, 2021 at 10:30 a.m.

1. <u>20-90613-E-7</u> <u>BSH-2</u>	OVIDIO/ANGELICA BARAHONA Brian Haddix	MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 2-2-21 <u>[26]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 65 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p>The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice.</p>
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Ovidio Barahona and Angelica Cassandra Barahona ("Debtors") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute

right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because debtors are informed and believe that unless converted, the case will be subject to dismissal for a mean's test issue. Declarations, Dckts. 28, 29. Debtors declare that they can pay a dividend to "unsecureds" through a Chapter 13 plan. *Id.*

Debtor Ovidio's Declaration provides the following testimony under penalty of perjury:

1. I have personal knowledge of the facts contained herein and, if called upon, could competently testify thereto. Declaration, at 1:22-23; Dckt. 28.
2. I am Debtor 1 in the above-captioned petition filed pursuant to Chapter 13 of Title 11 of the United States Code. *Id.*, at 1:25-26.
3. I desire to convert this case to Chapter 13. *Id.*, at 1:28.
4. I have not previously converted this case. *Id.*, at 2:1.
5. I am informed and believe that unless we convert, our case will be subject to a Motion to Dismiss or Convert for a mean's test issue. To that end, I can pay a dividend to the general unsecureds through a Chapter 13 plan. *Id.*, at 2:2-4.

Debtor Angelica's Declaration provides the following testimony under penalty of perjury:

1. I have personal knowledge of the facts contained herein and, if called upon, could competently testify thereto. Declaration, at 1:22-23; Dckt. 28.
2. I am Debtor 2 in the above-captioned petition filed pursuant to Chapter 13 of Title 11 of the United States Code. *Id.*, at 1:25-26.
3. I desire to convert this case to Chapter 13. *Id.*, at 1:28.
4. I have not previously converted this case. *Id.*, at 2:1.
5. I am informed and believe that unless we convert, our case will be subject to a Motion to Dismiss or Convert for a mean's test issue. To that end, I can pay a dividend to the general unsecureds through a Chapter 13 plan. *Id.*, at 2:2-4.

On December 28, 2020, Tracy Hope Davis, the U.S. Trustee filed a Motion to Extend Deadline to file a Complaint Objecting to Debtor's Discharge under 11 U.S.C. § 727. Dckt. 30. The U.S. Trustee moved for the extension on the grounds that the Office of the U.S. Trustee needed additional time to investigate Debtor's financial reality as it pertains to child support arrearage and payments; banks statements on four of debtor's bank accounts; expenses claimed on Schedule J; SDI payments received; and pay statements for September 1, 2020 through present for which Debtor has failed to provide documentation. The U.S. Trustee's Motion was granted on March 3, 2021 and the deadline was extended to March 29, 2021. Dckt. 31.

Decision

The Motion, as presented, causes the court concern. Debtor's Schedule I and J show no projected disposable income to fund a plan. Indeed, Debtor's initial Schedules I and J shows a net income of only \$23.00 per month. Dckt. 1, p. 38. Neither of Debtor's Declarations provide testimony of the facts necessary to conclude the conversion is being sought in good faith and not to try and derail the Trustee's investigation after failing to provide documents. To the contrary, the declarations are identical and apart from stating the "informed and believe" (but have no actual knowledge) conclusory statement "that unless we convert, our case will be subject to a Motion to Dismiss or Convert for a mean's test issue. To that end, I can pay a dividend to the general unsecureds through a Chapter 13 plan[.]," Debtor's declarations are useless.

Additionally, the U.S. Trustee had filed and the Motion to Extend Deadline to File a Complaint Objecting to Discharge or to Dismiss Case was granted with the deadline having been extended to March 29, 2021. Dckt. 32. Although, as of the court's drafting of this pre-hearing disposition, the U.S. Trustee has not filed such a Complaint and no other updates have been provided to the court, the court is concerned nonetheless.

Furthermore, the Chapter 7 Trustee's Report dated February 4, 2021, reports neither Debtor, nor Debtor's counsel appeared at the February 4, 2021, 341 Meeting of Creditors. The Meeting of Creditors was continued to April 15, 2021.

Based on the information under penalty of perjury, which the two debtors in part are only "informed and believe," Debtor providing the court with information that it has no disposable income to fund a plan, Debtor not providing the court with testimony in support of the Motion or what their plan is for a Chapter 13 Plan, and the court being uninformed as to how the Debtor could and would proceed in good faith in Chapter 13 as compared to a Chapter 7 trustee prosecuting the Chapter 7 case, ~~the Motion is denied without prejudice.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by Ovidio Barahona and Angelica Cassandra Barahona ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is ~~denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.

J. Jesus Trigueros Gomez and Maria Delia Trigueros ("Debtors") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because Trustee is considering making it an asset case and seeking to confiscate Debtor's non-exempt home equity.^{FN.1} Debtor believes they will be able to pay their unsecured creditors through a Chapter 13 plan rather than having trustee sell their assets.

FN. 1. Though using an emotionally charged term "confiscate" to address the fiduciary duties of the bankruptcy trustee to administer property of the bankruptcy estate and Congress clearly providing (and all experienced bankruptcy attorneys being well aware) that after paying liens on property of the bankruptcy estate sold by the Trustee and any monetary exemption claimed by the Debtor, the balance of property of the bankruptcy estate is just that – property of the bankruptcy estate, placed there by the debtor when the debtor filed bankruptcy. *See Schwab v. Riley*, 560 U.S. 770, 774 (2010)

Debtor filed amended Schedules I and J on February 16, 2021, showing Debtor's projected disposable income is \$915.00 per month. Dckt. 44. Debtor's counsel prepared and attached, as an exhibit to the instant Motion, a proposed plan with payments of \$915.00 for sixty months. Exhibit A, Dckt 42.

Trustee's Response

Trustee filed a Response on February 22, 2021 expressing non-opposition provided that:

- (1) the only relief is conversion to Chapter 13;
- (2) Debtor's motion is not construed as a motion to confirm a plan;
- (3) that all approved administrative expense incurred in the Chapter 7 case are included in the Chapter 13 case; and
- (4) if Debtor fails to make confirmed plan payments, the case will not be dismissed but shall be converted to a Chapter 7 case.

Dckt 46.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

The court requires that the Debtor sufficiently fund the plan to provide for a dividend on unsecured claims to be computed as if there were no Chapter 7 administrative expenses to be paid in the Chapter 13 case. This avoids the creditors with unsecured claims having to "foot the bill" for the Chapter 7 attempt when Debtor should have clearly known to file Chapter 13 if the Debtor did not want the property liquidated due to the non-exempt equity.

With respect to prospectively ordering that the case is to be reconverted in default and not dismissed, the court leaves it to the Chapter 13 Trustee and the Chapter 7 Trustee to be diligent (as the court is confident they are) in their duties, and if such conversion is proper, to seek that relief from the court rather than prophylactically just seeking to dismiss the Chapter 13 case. It could be that dismissal, rather than reconversion, would be what the Trustees believe is proper at some future date.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by J. Jesus Trigueros Gomez and Maria Delia Trigueros ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

IT IS FURTHER ORDERED that though the Chapter 7 administrative expenses must be paid through the Chapter 13 plan, the distribution to creditors with unsecured claims in the Chapter 13 case shall be computed as if such Chapter 7 administrative expenses are not having to so be paid (thereby not imposing those expenses on the creditors with unsecured claim, but requiring a little additional funding in light of the jump from Chapter 7 to Chapter 13 when the Chapter 7 Trustee was moving to pay creditors in the Chapter 7 case).

3. [20-90633-E-7](#)
[BLF-3](#)

TERESA TAYLOR
Pro Se

**MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR REMAX
EXECUTIVE, REALTOR(S)
3-4-21 [58]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is XXXXXXX.

The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1505 Jackellen Lane, Modesto, California ("Property").

The proposed purchaser of the Property is Joshua Troy Alley, and a summary of the terms of the sale are (the full terms of the Settlement are set forth in the Purchase Agreement filed as Exhibits C and D in support of the Motion, Dckt. 64):

- A. The purchase price is \$335,000.00, with an initial deposit of \$2,500.00.
- B. Seller to pay for natural hazards disclosure report, owner's title insurance policy, City and County transfer tax, and the cost of an upgraded one-year home warranty plan, not to exceed \$500.00.
- C. Buyer and Seller will pay escrow 50-50.
- D. Escrow to close within 15 days of written court approval.
- E. Property is being sold in "As-Is" condition.
- F. All built in appliances are included in sale.
- G. Sale is subject to court approval and potential overbids.

On March 3, 2021, Trustee received an appraisal report stating the value of the property is \$335,000.00. Thus, the purchase price under the agreement is \$335,000. Trustee's Declaration, Dckt. 60, ¶ 15.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

- A. Any party overbidding must agree to purchase under the same terms as the proposed Agreement.
- B. Overbidder must first qualify to bid by presenting to Trustee's satisfaction that they have the financial ability to close the transaction per the Agreement—overbidder must demonstrate financial ability within 7 days of the hearing on this Motion.
- C. Minimum overbid is \$345,000.00 and successive bids must be in \$1,000.00 increments.
- D. A successful overbidder must, within 7 days of the hearing, deliver a cashier's check in the amount of \$5,000.00 as deposit. If overbidder timely completes the purchase, deposit will apply to purchase price, but if overbidder defaults, the deposit is non-refundable.

Avoidance of IRS Penalties

Additionally, Trustee seeks as part of this Motion to Sell to also avoid that portion of the Internal Revenue Service lien that relates to penalties. Trustee points the court to section 724(a) of the Bankruptcy Code for the authority to avoid the portion of the Internal Revenue Service lien that is attributable to penalties.

11 U.S.C. § 724(a), by incorporation of section 726(a)(4), allows Trustee to avoid a lien that secures a claim for penalties to the extent that the penalty is not compensation for actual pecuniary loss suffered by the claimant. The court in *In re Gill* found that these statutes "expressly authorize[]" Trustee

“to avoid, subordinate and preserve the penalty portion of the IRS’s tax lien for the benefit of the estate’s unsecured creditors.” (*In re Gill*, (B.A.P. 9th Cir. 2017) 574 B.R. 709, 716.)

The Court finds that Trustee’s interpretation of 724(a) provides for the avoidance of the penalty portion of the IRS’s tax lien. The purpose of 724(a) is to protect unsecured creditors from Debtor’s wrongdoing. Placing the penalty portion of the IRS’s tax lien ahead of that of unsecured creditors penalizes innocent creditors, not the delinquent taxpayer. The sum of the IRS tax lien attributable to penalties is avoided and preserved for unsecured creditors. This does not however prevent the IRS’s subordinated lien from receiving a portion of the proceeds of Chapter 7 in the order prescribed for payment to unsecured creditors.

While the Trustee may show a basis for avoiding that portion of the Internal Revenue Service lien, the Supreme Court requires that actions to determine the extent, validity, and priority of liens or interests in property must be brought by an adversary proceeding, except for the valuation of a secured claim pursuant to 11 U.S.C. § 506(b) or a debtor avoiding a transfer of an interest in exempt property. Fed. R. Bankr. P. 7001(2).

Here, the Trustee asserts the right to avoid the lien as provided in 11 U.S.C. § 724(a). That requires an adversary proceeding. If a motion would suffice, then such would not be part of a motion to sell property, but a separate motion brought against the Internal Revenue Service. Federal Rule of Civil Procedure 18, which is incorporated into Federal Rule of Bankruptcy Procedure 7018, allowing for the combining of multiple claims for relief against multiple parties is not incorporated into the Contested Matter practice as provided in Federal Rule of Bankruptcy Procedure 9014(c).

The Trustee has not requested in the Motion or provided notice to the Internal Revenue Service that the Trustee is requesting a sale free and clear of the lien to the extent that it relates to penalties based upon there being a *bona fide* dispute of the enforceability of the lien as against the bankruptcy Trustee.

It appears that the Internal Revenue Service would consent to such treatment, having filed Amended Proof of Claim 1-2 on March 10, 2021, in which it clearly identifies \$23,656.20 for penalties (it is not clear what portion of the claimed interest is interest on penalties). See Trustee’s Counsel’s Declaration, ¶ 4; Dckt. 63. However, as of the court’s April 6, 2021 review of the Docket, documentation of consent to relief in the avoiding of that portion of the lien has not been presented to the court.

At the hearing, **XXXXXXX**

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will net the bankruptcy estate approximately \$50,062.52 to pay administrative expenses and creditors with unsecured claims.

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately \$20,100.00, with 3% to Trustee's broker and 3% to buyer's agent. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the M&T Bank Lien on the property continues to accrue interest, decreasing the amounts available to unsecured creditors.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that ~~Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Joshua Troy Alley or nominee ("Buyer"), the Property commonly known as 1505 Jackellen Lane, Modesto, California ("Property"), on the following terms:~~

- ~~_____ A. The Property shall be sold to Buyer for \$335,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibits C & D, Dekt. 64, and as further provided in this Order.~~
- ~~_____ B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale, with 3 percent commission shall be paid to the Chapter 7 Trustee's broker, Bob Brazeal of Remax Executive, and 3 percent to Buyer's agent.

~~IT IS FURTHER ORDERED that the penalty portion of the Internal Revenue Service lien, as stated in Proof of Claim 1-2, against the real property commonly known as 1505 Jackellen Lane, Modesto, California, is avoided in the amount of \$23,656.20 pursuant to 11 U.S.C. § 724(a), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed. At the hearing, the representative for the Internal Revenue Service consented on the record to the avoidance of that portion of the lien pursuant to the Motion to Sell.~~

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

4. [20-90159-E-7](#)
[BLF-3](#)

BENJAMIN CHIPPONERI
Michael Benavides

**MOTION TO COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
BENJAMIN D CHIPPONERI AND
CHERISE CHIPPONERI
2-23-21 [33]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 23, 2021. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.
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Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Benjamin D. Chipponeri and Cherise Chipponeri

(“Settlor”). The claims and disputes to be resolved by the proposed settlement are the bankruptcy estate’s interest in personal injury claims against the City of Modesto regarding a vehicle accident in which Debtor’s non-filing spouse, Cherise Chipponeri and their children were injured (the “Claim”).

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 37):

- A. Upon resolution of the Claim, and after distribution of the net proceeds to Debtor’s spouse, Debtor and Ms. Chipponeri will deduct Debtor’s claimed exemption under Section 703.140(b)(5) of \$19,210.00 and retain that sum.
- B. Debtor will turn over to Trustee/Movant the remaining amount of the net proceeds, up to \$30,000.00—the sum sufficient to pay the claims filed and administrative fees and costs. Debtor shall not claim any of this amount as exempt.
- C. The settlement is subject to bankruptcy court approval, which Trustee shall seek and Debtor shall reasonably support.
- D. The Agreement shall be void and Trustee will return any amount that Debtor has paid if the court does not approve the settlement, or if the court approves but such approval is reversed on appeal.
- E. The parties have exchanged mutual general releases.
- F. Each party shall bear its own attorney’s fees and costs but in the event of a breach, the breaching party will pay all reasonable attorney’s fees and costs of the non-breaching party incurred by reason of such breach.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Trustee is confident that the Claim, or some portion thereof, is property of the estate because the claim is community property. Debtor, his spouse, and his counsel disagree and assert that it is unclear what portion of the Claim is community property. Even if the Claim is community property, it may not be property of the estate since the Debtor has no management or control over it. There is no certainty that Trustee would prevail in litigation over the characterization of the Claim as community property or as property of the estate.

Difficulties in Collection

Debtor contends a lack of funds with which to purchase the estate's interest in the Claim. Trustee would need to pursue liquidation of the estate's interest in the Claim or wait until final resolution of the Claim to receive the proceeds. The Compromise accomplishes the same result without the litigation over the characterization of the Claims status as community property.

Expense, Inconvenience, and Delay of Continued Litigation

It would be expensive to litigate the characterization of the Claim, and even if it is community property and property of the estate, Trustee would still need to liquidate or wait until resolution to receive the proceeds. The compromise achieves the same result without the expense, inconvenience and delay of litigation.

Paramount Interest of Creditors

The Compromise allows the Trustee to collect \$30,000 for the estate without further litigation. The Compromise saves time and administrative expenses, and the amount is likely sufficient to pay all claims filed as well as all administrative expenses.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Compromise eliminates the uncertainty, expense, and inconvenience of litigation while still allowing Trustee to collect the sum likely sufficient to pay all of the estate claims, administrative fees and costs upon favorable judgement or settlement of the underlying Claim. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Benjamin D. Chipponeri and Cherise Chipponeri (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 37).

5. [19-90493](#)-E-7
[DCJ-2](#)
5 thru 7

M. LEAVITT
David Johnston

**MOTION TO AVOID LIEN OF BANK OF
THE WEST**
3-25-21 [\[27\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 25, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The hearing on the Motion to Avoid Judicial Lien is continued to XXXXX.

This Motion requests an order avoiding the judicial lien of Bank of the West (“Creditor”) against property of the debtor, M Craig Leavitt (“Debtor”) commonly known as 1018 West Morris Avenue, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$108,880.62. Exhibit 4, Dckt. 29. An abstract of judgment was recorded with Stanislaus County on May 25, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$310,000.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total \$240,243.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000 on Schedule C. Dckt. 12.

Creditor’s Opposition

Creditor filed an Opposition on April 1, 2021. Dckt. 42. Creditor does not dispute Debtor’s entitlement to an exemption of \$175,000.00 or that the balance due on the first position consensual lien was \$240,243.00. However, Credit does dispute the Debtor’s estimation that the value of the Property was, at the time of petition, \$310,000.00. Creditor asserts to have conducted online searches of real estate sites Redfin and Zillow that indicate the current value is in excess of \$605,000. Further, according to Creditor, the website Realtor.com shows a sale pending for the price of \$615,000.

Creditor finds it “technically possible” but “highly unlikely” that the value of the property doubled in less than two (2) years. Therefore, Creditor opposes this Motion and requests time for an expert appraisal of the value of the property as of the date of petition, and to present that evidence at an appropriate hearing.

The court finds that a continuance is reasonable and thus the matter is continued to allow for discovery– namely for an appraisal of the property to be obtained.

At the hearing xxxxxxxx

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by M. Craig Leavitt (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to xxxxxx.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 25, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Balboa Capital Corporation ("Creditor") against property of the debtor, M Craig Leavitt ("Debtor") commonly known as 1018 West Morris Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,062.83. Exhibit 4, Dckt. 34. An abstract of judgment was recorded with Stanislaus County on September 28, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$310,000.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total \$240,243.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000 on Schedule C. Dckt. 12.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by M. Craig Leavitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Balboa Capital Corporation, California Superior Court for Orange County Case No. 30-2018-00971978-CL-CL-CJC, recorded on September 28, 2018, Document No. 2018-0067599-00, with the Stanislaus County Recorder, against the real property commonly known as 1018 West Morris Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 25, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of States Recovery Systems, Inc. ("Creditor") against property of the debtor, M Craig Leavitt ("Debtor") commonly known as 1018 West Morris Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,472.43. Exhibit 4, Dckt. 39. An abstract of judgment was recorded with Stanislaus County on February 21, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$310,000.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total \$240,243.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000 on Schedule C. Dckt. 12.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by M. Craig Leavitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of States Recovery Systems, Inc., California Superior Court for Stanislaus County Case No. 2023132, recorded on February 21, 2018, Document No. 2018-0010935-00, with the Stanislaus County Recorder, against the real property commonly known as 1018 West Morris Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on January 29, 2021. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

The Objection to Trustee's Final Report has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Trustee's Final Report is sustained.

Kroloff, Belcher, Smart, Perry, & Christopherson, a Professional Law Corporation ("Objector") object to the Trustee's Report of No Distribution in Ali Saeed Muthana's ("Debtor") Chapter 7 case on the basis that:

- (1) Trustee has failed to investigate Debtor's financial affairs as required under 11 U.S.C. § 704(a)(4);
- (2) Debtor has failed to explain satisfactorily any loss of assets or deficiency of assets to meet the debtor's liabilities pursuant to 11 U.S.C. § 727(a)(5);
- (3) Debtor may be in violation of 11 U.S.C. § 548(a) by transferring an interest in property on or within two (2) years of the date of filing of the petition and/or in violation of 11 U.S.C. § 548(e) by transferring an interest in property made on or within 10 years before the date of the filing of the petition;
- (4) Trustee's failure to provide an accurate accounting of certain property of the debtor has deprived Kroloff and the court the ability to fully assess the financial

- (5) There is evidence that debtor may currently have, or may have had within two years of filing the petition, sufficient assets to pay Objector significantly more than the amounts stated in the Trustee's Final Report.

Moreover, Objector requests that the court order Trustee to examine the acts and conduct of Debtor under 11 U.S.C. § 727(c)(2).

Objector asserts that on September 25, 2015 Debtor and a friend purchased a California Lottery Scratcher ticket which turned out to be a winning ticket in the amount of \$10 million. Debtor ultimately received one-half of said prize, or \$5 million. It is unknown to Objector whether Debtor received his winnings in one lump sum or in periodic payments.

Objector represented Debtor as plaintiff and cross-defendant in a breach of contract case in San Joaquin County Superior Court in 2019. At the conclusion of trial, Debtor refused to pay the legal fees and costs in the total amount of \$81,393.27.

Objector alleges that despite the fact that Debtor became a millionaire during the pendency of the litigation which objector represented Debtor, the Trustee's Final Report fails to list the lottery winnings or how the money was spent. The Final Report indicates that only 0.9% of Objector's claimed amount will be paid due to assets listed by Debtor in his petition. Thus, Objector alleges that Trustee failed to adequately investigate whether Debtor had additional assets or what happened to the millions of dollars in winnings, where a simple internet search would have revealed that Debtor had won this lottery prize. Pursuant to 11 U.S.C. § 704(a)(4), the Trustee must investigate what happened to the missing millions of dollars.

Moreover, Objector argues that Debtor has failed to satisfactorily explain any loss of assets or deficiency in assets to meet his liabilities since Debtor's petition lists minimal assets that do not include the lottery winnings and it appears that these were not deposited in the bank nor did Debtor open retirement accounts. Further noting, that the listed assets are of such minimal value, that Debtor has clearly failed to explain how he spent or lost the \$5 million. Thus, Debtor must provide an accurate accounting of the winnings and, if he fails, the court may not grant the discharge under the provisions of 11 U.S.C. § 727 (a)(5).

Due to this lack of information regarding the lottery winnings, Objector further alleges that this may indicate the existence of fraudulent transfers that may be avoidable pursuant to 11 U.S.C. § 548(a). At the time Debtor won the lottery, he was a party to litigation in which he was ultimately found liable in the amount of \$625,000, which he knew at the time he won the lottery and thus had knowledge that he would possibly be subject to a significant judgment and attorney's fees.

Objector also requests pursuant to 11 U.S.C. § 704(a)(7) that Trustee provide Objector with a full accounting of all documentation and information necessary to show when and to whom Debtor's lottery winning initially paid by the California State Lottery and when, how, and to whom such winnings were subsequently distributed to by Debtor.

Lastly, pursuant to 11 U.S.C. § 727(c)(2), Objector requests that the court order Trustee fully examine Debtor to determine whether grounds exist for denial of discharge and that Trustee obtain and provide Objector with a full accounting of Debtor's financial accounts, assets, and any and all distributions and transfers made since Debtor received the lottery winnings until the filing of this bankruptcy case.

DISCUSSION

The Trustee has not filed any response to the present Objection to the Final Report.

On March 9 and 10, 2021, Trustee filed four *Ex-Parte* Applications for an order Authorizing 2004 Examination of: California State Lottery Commission (Dckt. 31), Debtor Ali Muthana (Dckt. 33), Basha Muthana (Dckt. 35), and AA Smoke Shop Plus, Inc. (Dckt. 40). Trustee will conduct the 2004 Examinations of these parties in connection with his investigation of the assets of the Debtor and any possible avoidable transfers by the Debtor.

It appears that Objector has disclosed a significant asset for the Trustee to investigate - lottery winnings won within the last four years in the amount of \$5 million. It also appears that Trustee is now in pursuit of such information by conducting 2004 Examinations and requesting the various parties produce documents related to the \$5 million lottery winnings.

The Objection to the Trustee's Final Report (Dckt. 19) is sustained.

Additional Relief Requested

As part of the Objection, Objector also seeks to have the court to provide Objector with "a full accounting of all documentation and information necessary to show when and to whom debtor's lottery winnings were initially paid by the California State Lottery and when, how and to whom such winnings were subsequently distributed by the debtor." Objection, p. 5:14-17; Dckt. 24. The authority for such mandatory injunction is stated to be 11 U.S.C. § 704(a)(7). That section provides, "(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest; . . ." The Motion does not offer any basis for the court ordering what Congress already requires as a matter of law.

Additionally, Objector requests that the court also order the Trustee to examine the acts and conduct of the Debtor to determine whether a basis exists for denying the Debtor a discharge. As cited by Objector, Congress so provides in 11 U.S.C. § 727(c)(2), which states, "(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge."

Collier on Bankruptcy provides a discussion of this statutory provision and the scope of the relief to be granted:

[2] Court May Order Investigation; § 727(c)(2)

To curb the granting of discharges in collusive and fraudulent cases in which the creditors refrain from objecting, section 727(c)(2) provides that on request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether there are grounds for denial of discharge. However, the authority to order an investigation into acts or conduct that might give rise to denial of discharge does not extend to ordering investigation of grounds for revocation of a discharge previously granted. [citing to a 1995 bankruptcy court decision from the District of Connecticut]

Under section 727(c)(2), the court may act only upon the request of a party in interest; it may not issue an order *sua sponte*. The investigation is conducted by the trustee or the United States trustee as the case may be.

6 COLLIER ON BANKRUPTCY P 727.16 (16TH 2021). COLLIER sees this provision as one in which some creditors see it to be to their financial advantage to not file objections to discharge or disclose the collusion or fraud to the trustee, but some other creditors have some information from which an indication of fraud or misconduct might exist.

In reviewing the Objection, no allegation is made by Objector of having brought Debtor's Lottery winnings to the attention of the Trustee prior to filing the Objection, one year after the bankruptcy case was filed and seven months after the discharge was entered. No copy of a letter from Objector (Debtor's pre-bankruptcy attorneys) to the Trustee informing the Trustee of the Lottery winnings is included as an exhibit in support of the Objection.

Additionally, while various exhibits are attached to the Objection (in violation of L.B.R. 9004-2(c) and 9014-1(d)(4)), the court notes that no declaration or other method of authenticating the various exhibits as required by Federal Rule of Evidence 901 et seq is provided.

In asserting that the Trustee conducted an inadequate investigation, Objector does not provide information how Objector learned of the Lottery winnings. Seeing the plethora of exhibits of internet articles about the Lottery winnings attached to the Objection, the court conducted an internet search using the Google search engine with the Debtor's name, Ali Muthana and his residence city of Ceres (the only address disclosed on the Schedules and Statement of Financial Affairs). Scrolling through the first 12 pages (before giving up) of results does not disclose Ali Muthana having been a Lottery winner. However, adding the word "lottery" to the search results in the first search return a November 26, 2015 Modesto Bee Article disclosing that Ali Muthana was involved in some way with the Lottery, but one has to subscribe to the Modesto Bee to read the article. No other Lottery winning search returns show up.

Objector's Objection disclosing the Lottery winnings was filed on January 29, 2021. On February 17, 2021, the Trustee's motion to employ counsel was filed. Dckt. 27. In it the Trustee states that Objector's Opposition alerted the Trustee to the Lottery winnings. Having been informed, the Trustee was proceeding with an investigation and needed to employ counsel. The court order authorizing employment was filed on February 18, 2021, and on March 9, 2021, Motions to conduct 2004 Examinations were filed by the Trustee. Dckts. 31, 33, 40 (the last one filed on March 10, 2021).

It appears that once Objector provided information about the Lottery winnings to the Trustee, the Trustee immediately acted to undertake an investigation.

In the Objection, Objector states "[t]he Trustee's failure to provide an accurate accounting of certain property of the debtor has deprived Kroloff and the court the ability to fully assess the financial circumstances of the debtor." Objection, p. 127-28, 2:1; Dckt. 24. The Objection does not state what impaired Objector's ability to avail itself of its right to conduct 2004 examinations and investigate this possible asset of the bankruptcy estate (which in doing so would have tipped off the Trustee to information that Objector had about the Lottery winnings) or filing an action to have Debtor denied a discharge.

Finally, in the Objection, Objector requests that the court not grant debtor a discharge until Objector is provided the accounting from the Trustee it has requested. Unfortunately, Objector waited until

January 29, 2021 before bringing the Lottery winnings to the Trustee with the filing of the Objection. This was seven months after the Debtor's discharge was entered on June 11, 2020. At this juncture, it appears that relief in the nature of what Objector now, fourteen months after the case has been filed and the discharge entered, seeks would be a revocation of the discharge as provided in 11 U.S.C. § 707(d), if proper.

It is unfortunate, for the bankruptcy estate and creditors, that Objector appears not to have disclosed this information until the January 29, 2021 filing of the Objection to the Final Report.

At the hearing, **XXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Trustee's Final Report filed by Kroloff, Belcher, Smart, Perry, & Christopherson, a Professional Law Corporation ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to the Trustee's Final Report, Dckt. 19, is sustained and the proposed Final Report, Dckt. 19, is not approved.

IT IS FURTHER ORDERED that the additional relief requested in the Opposition, including: (1) Ordering the Trustee to provide Objector with an accounting; (2) Ordering the Trustee to investigate the conduct of Debtor; (3) Order that the Debtor not be granted a discharge until "necessary information and documentation" is produced by Debtor; and other requested relief, and each of them, are denied without prejudice.

FINAL RULINGS

9. [20-90744-E-7](#)
[UST-1](#)

MICHAEL/ANNETTE BOWERS
Mary Anderson

**MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B)
3-8-21 [17]**

Final Ruling: No appearance at the April 8, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2021. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File Complaint Objecting to Discharge and to File a Motion to Dismiss Case Under Sec. 707(B) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Extend Deadline to File Complaint Objecting to Discharge and/or to File a Motion to Dismiss Case Under Sec. 707(B) is granted.

Tracy Hope Davis, the United States Trustee for Region 17, ("Movant" / "the U.S. Trustee") moves to extend the deadline to file a complaint objecting to discharge under 11 U.S.C. § 727 and/or to file a motion to dismiss the case under section 707(b) of Michael Dennis Bowers and Annette Maria Bowers ("Debtor") bankruptcy case because:

1. Debtor's Schedules are internally inconsistent;

2. Debtor has not provided evidence showing their intention to either keep or surrender their truck; and
3. Debtor has not provided sufficient documentation supporting large medical costs and expenses.

The deadline for filing a complaint objecting to discharge was March 8, 2021. Dckt. 7, ¶ 9. The Motion requests that the deadline to object to Debtor's discharge be extended to May 31, 2021.

Debtor's Response

Debtor filed a Reply on March 25, 2021. Dckt 22. Debtor states that they do not object to the extension and addresses Trustee's concerns as follows:

1. Debtor has not filed any amendments because they "typically wait until [they] have everything that needs to be amended so [they] only have to file an amendment once." *Id.* at 3:14.
2. Debtor claimed their intent to keep the truck in the initial filing and must keep it because: the location of their residence requires a four-wheel-drive vehicle; the purchase was less than "900" days ago and thus not subject to cram-down; it is Debtor's only vehicle; and Debtor's bad credit makes it unlikely they can easily replace the vehicle. *Id.* at 2:7.
3. Debtor Annette suffers from Multiple Sclerosis and it is difficult for Debtor to prove with receipts their medical expenditures because many of the supplements are purchased "with other items" when shopping. Additionally, Debtor gets "cash back" at the grocery store to pay for Debtor's medical marijuana. *Id.* at 2:22.

Further, Debtor contends that they believe they have been responsive to Trustee's requests for more information, had given Trustee "all they wanted," and were unaware that the information was inadequate until this motion was filed. *Id.* at 3:6.

DISCUSSION

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on March 8, 2021, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to May 31, 2021.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Deadline to File Complaint Objecting to Discharge under 11 U.S.C. § 727 and/or a Motion to Dismiss Case Under § 707(B) filed by Tracy Hope Davis, United States Trustee for Region 17 (“Movant” / “the U.S. Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline for Movant to object to Michael Dennis Bowers and Annette Maria Bowers’s (“Debtor”) discharge is extended to May 31, 2021.